C. William Miller
Benjamin Franklin's Philadelphia Printing (1974)

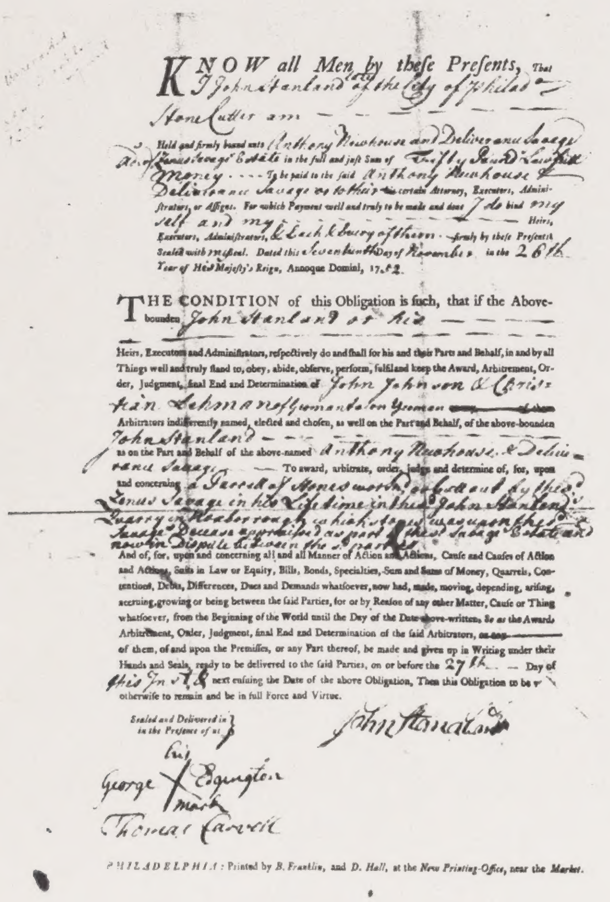
175–

495 [FRANKLIN, Benjamin (1706–1790). The Advantages of Employing a Man to sweep the Pavements in Philadelphia]. [175–]

NOTES: Not seen. Franklin stated in his *Autobiography* (p. 203) that he "wrote and printed a Paper" setting forth the advantages to the shopkeepers in the neighborhood of hiring a man to sweep the pavements clean and carry off the dirt from the unpaved streets twice a week "for the Sum of Six-pence per Month, to be paid by each House." Copies of the printed proposal were circulated, the householders agreed unanimously to support the plan, and this action led eventually to an Assembly bill to pave the streets of Philadelphia.

REFERENCES: STE 40525, Evans-Bristol 1460, Ford 103, Campbell 549.

496 KNOW ALL MEN by these Presents. Arbitration Bond. 175–



KNOW all Men by these Presents, That I John Stanland of the City of Philada Stone Cutter am Held and firmly bound unto Anthony Newhouse and Deliverance Savage ... in the full and just Sum of [illegible] Money. To be paid to the said Anthony Newhouse & Deliverance Savage or to their certain Attorney, Executors, Administrators, or Assigns. For which Payment well and truly to be made and done I do bind my self and my Heirs, Executors, Administrators, & each & every of them firmly by these Presents. Sealed with my Seal. Dated this Seventeenth Day of November in the 26th Year of His Majesty's Reign, Annoque Domini, 17[illegible].

THE CONDITION of this Obligation is such, that if the Above-bounden John Stanland or his Heirs, Executors and Administrators, respectively do and shall for his and their Parts and Behalf, in and by all Things well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Arbitrement, Order, Judgment, final End and Determination of John Johnson & Christian Lehman of Germantown Yeoman Arbitrators indifferently named, elected and chosen, as well on the Part and Behalf, of the above-bounden John Stanland as on the Part and Behalf of the above-named Anthony Newhouse & Deliverance Savage To award, arbitrate, order, judge and determine of, for, upon and concerning [illegible]

And of, for, upon and concerning all and all Manner of Action and Actions, Cause and Causes of Action and Actions, Suits in Law or Equity, Bills, Bonds, Specialties, Sum and Sums of Money, Quarrels, Contentions, Debts, Differences, Dues and Demands whatsoever, now had, made, moving, depending, arising, accruing, growing or being between the said Parties, for or by Reason of any other Matter, Cause or Thing whatsoever, from the Beginning of the World until the Day of the Date above-written. So as the Award, Arbitrement, Order, Judgment, final End and Determination of the said Arbitrators, of them, of and upon the Premisses, or any Part thereof, be made and given up in Writing under their Hands and Seals, ready to be delivered to the said Parties, on or before the 27th Day of this Inst [illegible] next ensuing the Date of the above Obligation, Then this Obligation to be void, otherwise to remain and be in full Force and Virtue.

Sealed and Delivered in the Presence of us

John Stanland

George X Edgington
his mark

Thomas Carroll

PHILADELPHIA: Printed by B. Franklin, and D. Hall, at the New Printing-Office, near the Market.

COLLATION: Pot half-sheet. TEXT: 33 ll. 252 x 148 mm.

TYPE: Caslon long primer leaded.

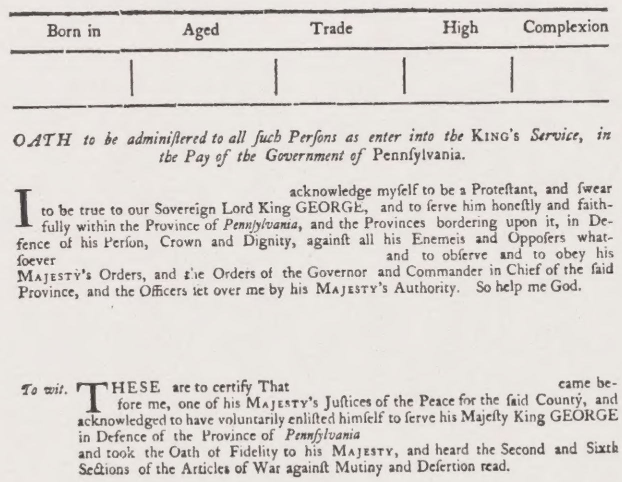
PAPER: Imported, marked Arms of Britain.

LEAF: 12.4 x 7.4 in.

REFERENCES: none located.

COPY: PPAmP.

PENNSYLVANIA, Province. Form of Enlistment. [no imprint]. [175–] 497



Born in	Aged	Trade	High	Complexion

OATH to be administered to all such Persons as enter into the KING'S *Service, in the Pay of the Government of* Pennsylvania.

I acknowledge myself to be a Protestant, and swear to be true to our Sovereign Lord King GEORGE, and to serve him honestly and faithfully within the Province of *Pennsylvania*, and the Provinces bordering upon it, in Defence of his Person, Crown and Dignity, against all his Enemeis and Opposers whatsoever and to observe and to obey his MAJESTY'S Orders, and the Orders of the Governor and Commander in Chief of the said Province, and the Officers set over me by his MAJESTY'S Authority. So help me God.

To wit. THESE are to certify That came before me, one of his MAJESTY'S Justices of the Peace for the said County, and acknowledged to have voluntarily enlisted himself to serve his Majesty King GEORGE in Defence of the Province of *Pennsylvania* and took the Oath of Fidelity to his MAJESTY, and heard the Second and Sixth Sections of the Articles of War against Mutiny and Desertion read.

COLLATION: Foolscap quarter-sheet. TEXT: 16 ll. 73 (119) x 154 mm.

TYPE: Caslon pica.

PAPER: Imported, marked Pericord | 1712.

LEAF: 6.5 x 8.3 in.

REFERENCES: Evans 7756, Campbell 573.

NOTES: Ascribed to the Franklin and Hall press principally on the evidence of frequently recurring charges for enlistment forms in BF and DH Workbook No. 2 (see nos. A 204 (1748), A 242–246 (1755), A 251–253 (1756)).

COPY: PHi.

THIS INDENTURE. Apprentice Indenture. 175– 498

COLLATION: Pot half-sheet. TEXT: 33 ll. 207 (266) x 126 mm.

TYPE: Caslon pica leaded.

PAPER: [unexamined].

LEAF: 12.3 x 7.8 in.

C. William Miller
Benjamin Franklin's Philadelphia Printing (1974)

man in the preface of this year's almanac replied to the prediction made by R. Saunders—BF's pseudonym in his *Poor Richard*s—in the almanac for the year 1740 that "J. J----n, Philomat, shall be openly reconciled to the Church of Rome" by denying the charge and calling "R. S. . . . one of Baal's false Prophets."

COPIES: PHi. PPL, PU.

The AMERICAN
Almanack
For the Year of Chriſtian Account
1741,
Being the FIRST after LEAP-YEAR.

Wherein is contained,

The Lunations, Eclipſes, Planets Motions and Aſpects, Judgment of the Weather, the Time of the Sun's and Moon's Riſing and Setting, Seven Stars Riſing, Southing and Setting, High Water, Spring Tides, Fairs, Courts, Meetings, and other obſervable Days.

Fitted to the Latitude of Forty Degrees North, and a Meridian of Five Hours Weſt from *London*, but may without much Error, ſerve from *Newfoundland* to *Carolina*.

By *JOHN JERMAN*, Philomath.

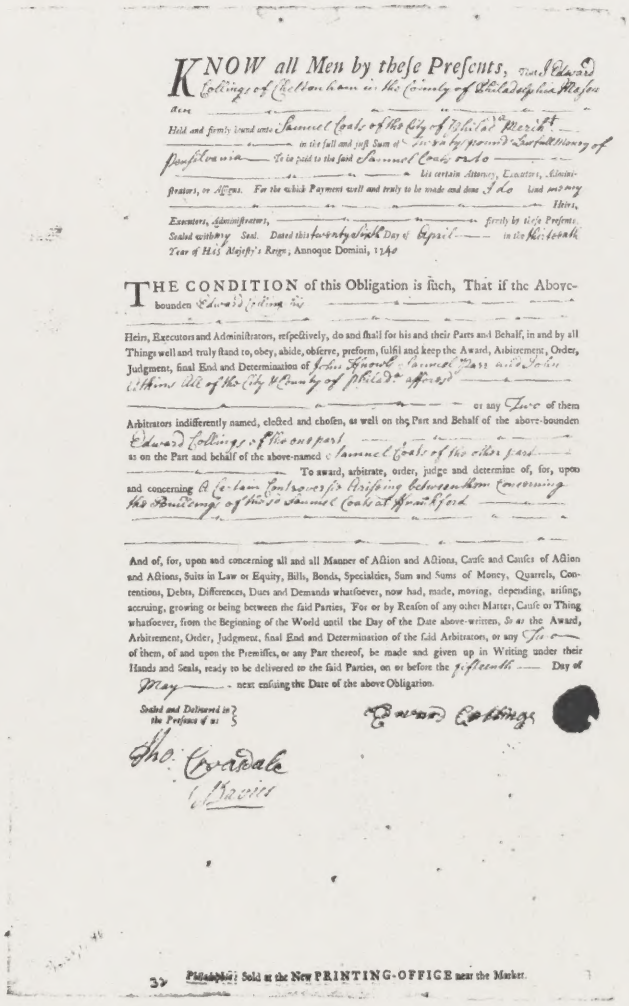
Luke xii. *v.* 54—57. *When ye ſee a cloud riſe out of the weſt, ſtraitway ye ſay, There cometh a ſhower; and ſo it is. And when ye ſee the ſouth-wind blow, ye ſay, There will be heat; and it cometh to paſs. Ye hypocrites, ye can diſcern the face of the ſky, and of the earth: But how is it, that ye do not diſcern* THIS TIME? *Yea, and why even of your ſelves judge ye not what is right?*

PHILADELPHIA:
Printed and Sold by B. FRANKLIN, in Market-ſtreet.

[194]

[KINNERSLEY, Ebenezer (1711–1778)]. A Letter to a Friend in the Country, July 15, 1740]. [1740] (*See B 14*)

KNOW ALL MEN by these Presents. Arbitration Bond. *Philadelphia*: Sold at the New PRINTING-OFFICE near the Market. [1740] 195



KNOW all Men by theſe Preſents, That I Edward Collings of Moreham in the County of Philadelphia Weaver

Held and firmly bound unto Samuel Coats of the City of Philad.a Merchant

in the full and juſt Sum of Five hundred Pounds Current Money of Pennſylvania To be paid to the ſaid Samuel Coats or to his certain Attorney, Executors, Adminiſtrators, or Aſſigns. For the which Payment well and truly to be made and done I do bind myſelf my Heirs, Executors, Adminiſtrators, firmly by theſe Preſents. Sealed with my Seal. Dated this twenty ſixth Day of April in the ſixteenth Year of His Majeſty's Reign, Annoque Domini, 1740

THE CONDITION of this Obligation is ſuch, That if the Above-bounden Edward Collings his

Heir, Executors and Adminiſtrators, reſpectively, do and ſhall for his and their Parts and Behalf, in and by all Things well and truly ſtand to, obey, abide, obſerve, preform, fulfil and keep the Award, Arbitrement, Order, Judgment, final End and Determination of John Knowles Samuel Carr and John Withins all of the City & County of Philad.a aforeſaid

or any Two of them Arbitrators indifferently named, elected and choſen, as well on the Part and Behalf of the above-bounden Edward Collings of the one part, as on the Part and behalf of the above-named Samuel Coats of the other part. To award, arbitrate, order, judge and determine of, for, upon and concerning a certain Controverſy ariſing between them concerning the Building of the ſaid Samuel Coats at Frankford

And of, for, upon and concerning all and all Manner of Action and Actions, Cauſe and Cauſes of Action and Actions, Suits in Law or Equity, Bills, Bonds, Specialties, Sum and Sums of Money, Quarrels, Contentions, Debts, Differences, Dues and Demands whatſoever, now had, made, moving, depending, ariſing, accruing, growing or being between the ſaid Parties, For or by Reaſon of any other Matter, Cauſe or Thing whatſoever, from the Beginning of the World until the Day of the Date above-written, ſo as the Award, Arbitrement, Order, Judgment, final End and Determination of the ſaid Arbitrators, or any Two of them, of and upon the Premiſſes, or any Part thereof, be made and given up in Writing under their Hands and Seals, ready to be delivered to the ſaid Parties, on or before the fifteenth Day of May next enſuing the Date of the above Obligation.

Sealed and Delivered in the Preſence of us

Edward Collings

Tho. Cordale
I Davis

32 Philadelphia: Sold at the New PRINTING-OFFICE near the Market.

COLLATION: Pot half-sheet. TEXT: 32 ll. 129 x 145 mm.
TYPE: Caslon long primer leaded.
PAPER: Imported, marked Arms of Britain | crown GR encircled.
LEAF: 12.3 x 7.6 in.
REFERENCES: none located.
NOTES: Ascribed to BF's press principally on the basis of the partial imprint. This bond could have been printed as early as May, 1739, when BF began using his first Caslon long primer.
COPY: CtY.

[A LETTER to Mr. Ebenezer Kinnersley from his Friend in the Country]. [1740] 196

ERIC P. NEWMAN NUMISMATIC EDUCATION SOCIETY

6450 Cecil Avenue, St. Louis, Missouri 63105

June 7, 1988

American Philosophical Society
Independence Square
Philadelphia, PA 19106

Gentlemen:

In our collection, I believe I have found an unlisted imprint of Benjamin Franklin and wanted to check with you first because you own an almost identical item. It is an arbitration bond.

Perhaps Professor Miller or someone on his behalf is assembling new material which has turned up since the 1974 publication of Benjamin Franklin's Philadelphia Printing. I enclose a copy of an arbitrator's bond dated September 19, 1733. It seems to be exactly the same form as item 496 in Miller, except that the name of the printer is not on my document. Franklin's and Hall is on your document. Since our document is dated 1733, it would naturally be prior to the Franklin and Hall imprint and probably prior to the other imprint which Franklin used on similar documents. The paper seems to be complete so that no imprint has been cut off.

The back of our document has a handwritten award by the arbitrators and is dated September 19, 1733 and the award is made payable on September 19, 1734. There is an additional notation of the date 1733 and there is a reference to the 7th year of reign of George II.

The bond is by Joseph Townsend of Chester County, Pennsylvania, and runs in favor of Isaac and Hannah Cook.

It seems to me that the text of our piece is exactly the same imprint as your piece, but I cannot be positive. Apparently the type was set and locked in a frame on or before 1733 and used from time to time with the address of Franklin added on subsequent printings.

I am enclosing photocopies of the front and back of our piece and would appreciate any comments you care to make on it. I will be glad to let anyone working on the matter examine the original if that is desirable. The tapes which are evident on the photocopy are readily removable with water and if the document is of enough importance, I may undertake to do that and to make a few minor repairs.

I send greetings to those of you whom I have known in the past and I thank you again for showing my grandson in 1986 some of your choice pieces and for permitting me years ago to speak before the society.

Sincerely,

Eric P. Newman

jah

Encl.

ERIC P. NEWMAN NUMISMATIC EDUCATION SOCIETY

6450 Cecil Avenue, St. Louis, Missouri 63105

June 15, 1988

Mr. Neil Moldenhauer
American Arbitration Association
One Mercantile Center
St. Louis, MO 63101

Dear Neil:

Enclosed is a photocopy of the Arbitration bond and Arbitration award about which I spoke to you. I also enclose a copy of my letter of June 7, 1988 to the American Philosophical Society which gives substantial detail.

As soon as I get more facts, I believe this will have a very interesting use in some publication for the AAA. Please do not release it for publication anywhere without my consent. The original is beautiful and the award is written in ink on the back of the printed side.

Sincerely,

Eric P. Newman

EPN:bv
enc.

C. William Miller
Benjamin Franklin's Philadelphia Printing
Amer Phil Soc (1974)
Independence Square, Phila.

KNOW All Men by these Presents, That I Joseph Townsend of y County of Chester in in y Province of Pensilv. Yeoman am Held and firmly bound unto Isaac Cook & Hannah his Wife Exrs. of Ann Townsend decd in the full and just Sum of One Hundred Pounds To be paid to the said Isaac Cook his certain Attorney, Executors, Administrators, or Assigns. For the which Payment well and truly to be made and done I do bind myself Heirs, Executors, & Administrators, firmly by these Presents. Sealed with my Seal. Dated this Nineteenth day of September in the Seventh Year of Her Majesty's Reign, Annoque Domini, 1793.

THE CONDITION of this Obligation is such, That if the Above-bounden Joseph Townsend his Heirs, Executors and Administrators, respectively, do and shall for his and their Parts and Behalf, in and by all Things well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Arbitrement, Order, Judgment, final End and Determination of John Warder Joseph Gilpen Francis Knowles & Isaac Davis or any three of them Arbitrators indifferently named, elected and chosen, as well on the Part and Behalf of the above-bounden [illegible] and of the above-named Isaac Cook & Hannah his Wife and concerning To award, arbitrate, order, judge and determine of, for, upon and concerning certain Differences relating to y Estate late of Richard Townsend decd

And of [illegible], upon and concerning all and all Manner of Action and Actions, Cause and Causes of Action and Actions, Suits in Law or Equity, Bills, Bonds, Specialties, Sum and Sums of Money, Quarrels, Contentions, Debts, Differences, Dues and Demands whatsoever, now had, made, moving, depending arising, accruing, growing or being between the said Parties, For or by Reason of any other Matter, Cause or Thing whatsoever, from the Beginning of the World until the Day of the Date above-written, So as the Award, Arbitrement, Order, Judgment, final End and Determination of the said Arbitrators, or any three of them, of and upon the Premisses, or any Part thereof, be made and given up in Writing under their Hands and Seals, ready to be delivered to the said Parties, on or before the First Day of October next ensuing the Date of the above Obligation. Then this present Obligation to be void and of none Effect, or else to be and remain in full Force and Virtue.

Sealed and delivered in the Presence of us

Jno Nicholas

John Roberts

Joseph Townsend

C. William Miller
Benjamin Franklin's Philadelphia Printing
Amer Phil Soc (1974)
Independence Square, Phila.

Know all men by these Presents That We the Subscribers Arbitrators within Named having Maturely Considered the Proofs and allegations of the within named Joseph Townsend and Isaac Cook & his wife Hannah have and by these Presents do by Vertue of the Power and Trust in us Reposed Award and Judge that the said Joseph Townsend his Heirs Exec.r or Admr shall pay or Cause to be paid unto the within named Isaac Cook & Hannah his Wife ~~their Execut.r Admr.~~ or Assigns the sum of Seventeen Pounds Lawfull money of Pensilv.a on or before the Nineteenth day of September w.ch will be in Year of our Lord One thousand Seven Hundred and Sixty four and the said Parties upon payment of the sum afs.d shall give unto each other Sufficient Discharges In Witness whereof we have hereunto set our hands and Seals this Nineteenth day of September Anno Thousand Seven hundred & Thirty three 1733

John Townsend

Joseph Gilpin

Francis Rawles

Isaac Deans

Recd Sept.r 19.th 1733

New York Law Journal

SERVING THE BENCH AND BAR SINCE 1888

NEW YORK LAW JOURNAL—Thursday, May 12, 1988

Arbitration

By Michael F. Hoellering

Int'l Transactions

When, in 1974, the U.S. Supreme Court decided that international agreements providing for the arbitration of securities claims should be enforced, the Court noted that contractual provisions specifying in advance the way in which disputes are to be resolved are "an almost indispensable precondition to achievement of the orderliness and predictability essential to any international business transaction."[1] Since then, due to the rapid expansion of international trade and the reluctance of parties to litigate in foreign courts, arbitration has become an ever more important means of resolving international commercial disputes.

Given the number of international agreements which now provide for arbitration, it is not surprising that the courts are devoting a larger share of their attention to novel international arbitration issues. Several of these most recent decisions are particularly interesting, for they provide new interpretations of the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (UN convention),[2] its application to awards rendered by the Iran-U.S. Claims Tribunal,[3] and address the calculation of prejudgment and postjudgment interest in arbitration matters.

Like with other intergovernmental agreements concerning commercial arbitration, the UN convention has two purposes: to make agreements to arbitrate enforceable — offensively by being eligible for a judicial order to compel arbitration, defensively by being usable to avoid or postpone judicial action in respect to the dispute; and, to recognize and enforce arbitral awards — offensively to collect sums payable under an award; and, defensively, as res judicata if a party attempts to litigate the same dispute in another forum. This view of the UN convention was recently affirmed in *Builders Federal (Hong Kong) Ltd. v. Turner Construction*,[4] a case of first impression wherein the court's subject-matter jurisdiction was challenged by a party on the basis that it lacked jurisdiction under the UN convention to decide offensive petitions to compel arbitration. Prior to reaching its decision, however, the Court had to determine whether subject-matter jurisdiction was indeed conferred upon it by the UN convention to decide the motion.

Hong Kong and Gartner, foreign subcontractors on a foreign construction project, sought to compel the foreign main contractor's (TEA) U.S. corporate parents to arbitrate claims on the basis that the main contractor was the alter ego of its American parents. The American parents moved for a dismissal or, in the alternative, a stay of all proceedings pending the outcome of the foreign arbitration in Singapore. TEA, drawing a distinction between defensive and offensive petitions to compel arbitration, attempted to preclude the court from deciding the motion on the basis that UN convention "authorizes defensive petitions but not offensive ones."[5]

In explaining the two different positions, the Court commented that by commencing the action, Hong Kong and Gartner, as plaintiffs, were without doubt taking the offensive in compelling arbitration. In contrast, the Court noted that a defensive petition arises when "a party to a contract containing an arbitration clause sues the other party in Court. The defendant responds with a 'defensive' petition to stay the suit and compel arbitration."[6]

The Court found that Chapter 1 of the Federal Arbitration Act (FAA) explicitly authorizes both defensive and offensive petitions to compel arbitration and noted that Chapter 2 of the FAA implements the UN convention. Since "the [FAA], in setting up procedural and jurisdictional machinery for the [UN] convention, also provides ... that Chapter 1 of the [FAA] applies to proceedings brought under Chapter 2, to the extent that Chapter 1 is 'not in conflict' with Chapter 2 or with the [UN] convention as ratified by the United States,"[7] and because TEA failed to show that an offensive use of the petition would be inconsistent with the purposes of the UN convention, it determined that TEA's position was without merit. Thus rejecting the distinction between defensive and offensive petitions to compel arbitration as suggested by the corporate parents regarding the Court's subject-matter jurisdiction under the [UN] convention, the Court concluded that the petition to "compel arbitration abroad properly lies in this Court under the [UN] convention."[8]

Stay Ordered

Resolving the issue of its power to compel arbitration abroad, the Court then concluded that the plaintiffs had a viable claim against the defendants under the alter-ego theory. However, it did note that if it were to "proceed summarily at this time ... it would have a disruptive effect upon the pending judicial and arbitral proceedings in Singapore ... [Further,] the Singapore court is currently considering whether plaintiffs are required to submit their claims as part of the arbitration under the main contract, or are entitled to a separate arbitration against TEA [the main contractor]. This Court's order, adding three additional corporate parties to the Singapore proceedings, would constitute an intrusive action against which comity counsels."[9] On that note, the Court ordered a stay of arbitration on the ground that a stay was more appropriate because of the pending judicial action in the foreign court.

Pursuant to Chapter 2 of the FAA, courts are obliged to confirm a foreign arbitral award unless there ex-

grounds for refusal. The bases upon which recognition and enforcement of a foreign arbitral award may be refused are set forth in Article V of the UN convention. One of the grounds for refusal is that the arbitral award is contrary to the public policy of the country in which recognition and enforcement is sought. In *Brandeis Intsel Ltd. v. Calabrian Chemical Corp.*,[10] Calabrian raised the public policy issue when it sought to vacate the arbitration award on the ground that, because the English arbitrators manifestly disregarded the law, American public policy required that the award be vacated. The Court held that the manifest disregard defense is not available under the UN convention to a party seeking to vacate an award based on foreign law that is issued by foreign arbitrators.

Brandeis Intsel Limited, a London-based trading company, purchased a quantity of chemicals from Calabrian Chemicals Corporation, a New York corporation. The sales contract called for arbitration of disputes before the London Metal Exchange (LME). After discovering that some of the goods were damaged, Brandeis rejected the entire shipment and demanded replacement. Calabrian refused and the dispute was submitted to arbitration. The arbitrators found that Brandeis was entitled to reject the goods and awarded damages, which included pre-award interest of 11.25 percent. Calabrian moved to vacate the award, contending that the arbitrators were guilty of manifest disregard of the British Sale of Goods Act of 1979 and that American public policy required that the award be vacated. The federal district court disagreed and confirmed the award.

Manifest Disregard

The Court noted that while manifest disregard to the law has never been defined, the doctrine "means more than error or misunderstanding with respect to the law." [11] Indeed, "manifest disregard of the law may be found only where the arbitrators 'understood and correctly stated the law but proceeded to ignore it.'" [12] Observing that the various circuit courts have defined the manifest disregard defense "in the narrowest possible terms," the Court held that "manifest disregard of law, whatever the phrase may mean, does not rise to the level of contravening 'public policy,' as *that* phrase is used in Article V of the convention." [13] Concluding that "public policy" as used in the convention should not be defined to include "manifest disregard" of law, the Court reasoned that "to ask an American judge to determine whether foreign arbitrators manifestly disregarded the internal, substantive law of a foreign nation by which the parties agreed in their contract to be bound [is] a slippery slope upon which American judges should not embark, in clear derogation of the public policy underlying the convention." [14]

The Court further held that the award did not contravene public policy "as that phrase has been defined by American courts." [15] Citing to *Parsons & Whittemore Overseas Co., Inc. v. Societe Generale de L'Industrie du Papier (RAKTA)*,[16] the Court noted that "The [UN] convention's public policy defense should be construed narrowly. Enforcement of foreign arbitral awards may be denied on this basis only where enforcement would violate the forum state's most basic notions of morality and justice." [17] Because Calabrian's attack on the award did "not rise to the level of a challenge rooted in accepted public policy," [18] the Court had no choice but to dismiss Calabrian's defense. It also rejected Calabrian's attack on the award on grounds of bias and partiality, finding that Brandeis' membership in the LME was "hardly a sufficient basis to invalidate LME arbitration procedures as contrary to domestic public policy." [19]

Calabrian also sought to resist enforcement of the foreign award on the basis that the arbitrators' grant of pre-award interest at the rate of 11.25 percent was penal in nature. The standard for a party resisting an arbitration award in this circumstance is a showing that the 'foreign law pursuant to which the arbitrators awarded interest 'is penal only and relates to the punishing of public wrongs as contradistinguished from the redressing of private injuries,'" [20] such that the arbitrators' award of interest is unenforceable as contrary to American public policy. Because Calabrian failed to show that "under foreign law the interest [was] penal in nature," [21] or that there was some other "expression of accepted public policy which would preclude the arbitrators' grant to Brandeis of pre-award interest, either in principle or in the amount determined by the arbitrators," [22] the Court decided to uphold the arbitrators' grant of pre-award interest.

Although federal question jurisdiction does not provide federal courts with enforcement jurisdiction for arbitral awards issued by the Iran-U.S. Claims Tribunal, enforcement jurisdiction is nevertheless obtainable under the U.N. Convention. One case that illustrates this point is *Iran v. Gould*."

Enforcement Jurisdiction

Iran v. Gould involved a petition to confirm an arbitration award rendered by the Iran-U.S. Claims Tribunal. The tribunal's function is to "adjudicate claims between nationals of one country and the government of the other, as well as claims between the two governments." [24] Hoffman filed a claim before the tribunal and Iran filed counterclaims. Hoffman later was merged into Gould Marketing Inc., and is referred to as Gould thereafter by the tribunal in the proceedings.

An interlocutory award was issued by the tribunal of its intent to conduct an equitable accounting between the two parties. It later issued an award in favor of Iran. Iran then filed a petition seeking to enforce the award, and Gould moved to dismiss Iran's petition.

Regarding the jurisdiction for enforcement, the Court considered two bases for federal court-enforcement jurisdiction: subject-matter jurisdiction afforded by 28 USC §1331 (federal question jurisdiction), and the UN convention. As to federal question jurisdiction, the Court noted that adoption of the Algerian Accords (the agreement that created the tribunal and resolved the hostage crisis between the United States and Iran) as an executive agreement means that it "becomes a part of the law of the United States only if it is self-executing and requires nothing further to implement it." [25] Since this is not the case with the Accords, the Court concluded that federal question jurisdiction could not be had under 28 USC §1331.

The Court was of the opinion, however, that jurisdiction is offered by the UN convention because implementing legislation made clear that "actions arising under provisions of the [UN] convention are deemed to arise under the laws of the United States." [26] Since the "tribunal is a permanent arbitral body, the dispute involved legal persons and a commercial relationship, and the decision was rendered in the territory of a contracting state," [27] the Court saw no reason to deny jurisdiction under the UN convention. Accordingly, Gould's motion to dismiss Iran's petition to enforce the arbitral award was denied.

In another case involving the question of public policy, *Northrup Corporation v. Triad International Marketing S.A.*,[28] the Court considered whether a "well-defined and dominant" policy of the U.S. Department of Defense had been violated when an arbitrator rendered an award requiring an arms supplier to pay commissions owed to its marketing representative for soliciting armament sales to the Saudi Air Force. The Court determined that there was

C. William Miller
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Amer Phil Soc (1974)
Independence Square, Phila.

…lation and enforced the award.

…n 1970, Northrop Corp., a U.S. aircraft manufacturer, entered into a marketing agreement with Triad International Marketing S.A., under which Triad agreed to solicit contracts for aircraft, training and support services for the Saudi Air Force. The agreement contained an arbitration clause and provided that California law would govern. In 1975, Saudi Arabia issued a decree prohibiting the payment of commissions for armaments contracts. Northrop stopped paying commissions to Triad, and Triad demanded payment of the remaining commissions due under the agreement. The dispute was submitted to arbitration. The arbitrators concluded that California law did not prohibit enforcement of the agreement and rendered an award for Triad.

The federal district court vacated the award, reviewing it *de novo* rather than under a deferential standard on the ground that the question presented was whether the agreement was "contrary to law and public policy." [9] The Ninth Circuit Court of Appeals reversed. It ruled that the arbitrators' conclusions on legal issues were entitled to deference, stating that "[t]o now subject these decisions to *de novo* review would destroy the finality for which the parties contracted and render the exhaustive arbitration process merely a prelude to the judicial litigation which the parties sought to avoid." [10] The Court rejected the argument that the arbitrators' interpretations were in manifest disregard of the law, stating that while the "manifest disregard of law" standard is not easily defined, "it is clear it has not been met in this case." [11] Applying the deferential standard of review, the Court then stated that mere error in the interpretation of California law would not be enough to justify refusal to enforce the arbitrators' decision.

The Court also rejected the argument that enforcement of the agreement would be contrary to public policy. It found that Northrop's argument that the agreement conflicted with Saudi Arabia public policy "flies in the face of the parties' agreement that the law of California, and not Saudi Arabia, would determine the validity and construction of the contract." [12] Citing *W.R. Grace* (461 U.S. at 766), the Ninth Circuit stated that U.S. Department of Defense policy was not sufficiently "well defined and dominant" to justify refusal to enforce the award. Observing that the Defense Department had pursued the inconsistent goals of "accommodat[ing] Saudi Arabian interests and sensibilities" and "encouraging sales to Saudi Arabia of American manufactured military equipment," the Court concluded that it was unclear "what policy the Department of Defense adopted." [13]

Following the Court's reinstatement of the award, Triad moved to amend the order so as to include postjudgment interest.[14] The issues raised are whether prejudgment and postjudgment interest should be conducted at the rate fixed by federal law or state law, and whether postjudgment interest should run from the entry of judgment refusing to enforce the arbitration award or from the entry on remand of a judgment enforcing the award.

Regarding prejudgment interest, it is state law that determines the rate in diversity actions. Since the parties had agreed in their initial arbitration agreement that California law would govern, it is California law that controls the rate of prejudgment interest. However, postjudgment interest is determined by federal law, even in diversity cases. The Court noted that the main issue, and the more difficult problem, is selecting the point at which postjudgment interest begins to run.

The Court found that §1961 of 28 USC provided that interest "shall be calculated from the date of the entry of the judgment," and noted that the intent of §1961 was to "ensure that the plaintiff is further compensated for being deprived of the monetary value of the loss from the ascertainment of damages until payment by defendant." [15] Because "failure to allow postjudgment interest from the entry of the original judgment would penalize parties for choosing arbitration rather than jury trial, contrary to the 'national policy favoring arbitration' as an alternative to jury trials," [16] the Court concluded that the effective date of judgment for the purpose of calculating postjudgment interest is the date of the district court's order vacating the arbitration award.

Vicki Young, AAA editor of court decisions, assisted in the preparation of this article.

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(1) *Schenk v. Alberto-Culver Co.*, 417 U.S. 506, 516 (1974).
(2) Also known as the New York Convention; 21 U.S.T. 2517, T.I.A.S. No. 6997, 330 U.N.T.S. 4739; the implementing legislation is codified at 9 USC §201 et seq.
(3) See Algerian Declaration Concerning the Settlement of Claims, which was signed on Jan. 19, 1981, and is reprinted in *Arbitration and the Law*, 1981, page 181 and 20 *Int'l Legal Mats.* 230 (1981).
(4) 655 F. Supp. 1400 (SDNY 1987).
(5) Id. at 1403.
(6) Id.
(7) Id. at 1404-05.
(8) Id. at 1403.
(9) Id. at 1407.
(10) 656 F. Supp. 160 (SDNY 1987).
(11) Id. at 164 (citing to *Seigel v. Titan Indus. Corp.*, 779 F. 2d 891, 892-92 (2d Cir. 1985); *Drayer v. Krasner*, 572 F. 2d 348, 352 (2d Cir.), cert denied, 436 U.S. 948 (1978); *I/S Stavborg v. National Metal Converters, Inc.*, 500 F. 2d 424, 432 (2d Cir. 1974)).
(12) Id. at 165 (citing to *Siegel v. Titan Industrial Corp.*, 779 F. 2d 891, 892-93 (2d Cir. 1985) (quoting *Bell Aerospace v. Local 516*, 356 F. Supp. 354, 356 (WDNY 1973), rev'd on other grounds, 500 F. 2d 921 (2d Cir. 1974)).
(13) Id. at 165.
(14) Id. at 167.
(15) Id.
(16) 508 F. 2d 969 (2d Cir. 1974).
(17) 656 F. Supp. 165.
(18) Id. at 167.
(19) Id. at 169.
(20) Id. at 170.
(21) Id.
(22) Id.
(23) No. 87-03673 (C.D. Cal. 1988).
(24) Id. at 1-2.
(25) Id. at 4.
(26) Id.
(27) Id.
(28) 811 F. 2d 1265 (9th Cir. 1987), cert denied, 56 USLW 3288 (U.S. 1987).
(29) Id. at 1268.
(30) Id. at 1269.
(31) Id.
(32) Id. at 1271.
(33) Id.
(34) *Northrup Corporation v. Triad International Marketing S.A.* No. 84-6480, 88 *Daily Journal* D.A.R. 3962 (9th Cir. March 29, 1988).
(35) 88 *Daily Journal* D.A.R. 3963).
(36) Id. at 3964.

This column, which is a regular feature of the *Law Journal*, is prepared by members of the American Arbitration Association. Michael F. Hoellering is general counsel of the association.

C. William Miller
Benjamin Franklin's Philadelphia Printing
Amer Phil Soc (1974)
Independence Square, Phila.

AMERICAN PHILOSOPHICAL SOCIETY
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Edward C. Carter II, Librarian

15 June 1988

Eric P. Neuman
Eric P. Newman Numismatic Education Society
6450 Cecil Avenue
St. Louis, MO 63105

Dear Mr. Newman:

We are very fortunate to have Dr. Miller still here at the Library, so I was able to enlist his help in answering your letter of June 7. This is his answer:

> It was good to hear that you continue your interest in colonial printing and especially in issues from Franklin's press.
>
> The xerox of the arbitration bond which you sent the APS indicates the following:
>
> > 1. It is an early BF unsigned imprint set in BF's first long primer and falls within the thousands of pieces of ephemera which BF ran off for sale in his own shop or for the use of scriveners and attorneys, some of which I list in my bibliography on pp. 457-459.
> >
> > 2. It is the earliest arbitration bond from BF's press that I have seen. Dozens of such legal forms have been called to my attention by book dealers since I finished the bibliography in 1974.
> >
> > 3. The arbitration bond you refer to - Item 496, dated 175- - is an entirely different setting in Caslon type, not BF's first long primer from the James Foundry.

If you have no objection, I will keep the photocopies that you sent, and mark them as having come from your collection. Please let me know if find any more Franklin imprints or if you have any questions about ours.

Roy Goodman sends his regards.

Sincerely yours,

Beth Carroll-Horrocks

Beth Carroll-Horrocks
Manuscripts Librarian

xc: C. William Miller

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NEIL MOLDENHAUER
Regional Vice President
Missouri/Kansas

LORI A. MADDEN
Ass't. Regional Director
Kansas City, MO

June 22, 1988

Ms. Susan Klein
Vice President, Publications
American Arbitration Association
140 West 51st Street
New York, NY 10020-1203

Dear Susan:

One of my local advisory committee members, Eric P. Newman, Esq. recently sent me a photocopy of an Arbitration bond and Award dated 1733! It seems fascinating. There appears to be four arbitrators. At this time, Mr. Newman does not have a desire to write an article. Nonetheless, I thought it would be a good idea to forward the information to you.

Maybe a short feature could be published in the Arbitration Times or Donna Silberberg could find some public relations value. Please note that Mr. Newman has requested his permission before any publishing is done. His work phone number is (314) 331-6000. Please call me if you have any questions.

Very truly yours,

Neil Moldenhauer
Regional Vice President

NM/ps
Enclosures
xc: Robert Coulson, President
Eric Newman, Esq.

KNOW All Men by these Presents, That I Joseph Townsend of ye County of Chester in in ye Province of Pensilv.a Yeoman am Held and firmly bound unto Isaac Cook & Hannah his Wife Exrs. of Ann Townsend decd in the full and just Sum of One Hundred Pounds To be paid to the said Isaac Cook his certain Attorney, Executors, Administrators, or Assigns. For the which Payment well and truly to be made and done I do bind myself my Heirs, Executors & Administrators, firmly by these Presents. Sealed with my Seal. Dated this Nineteenth Day of September in the Seventh Year of His Majesty's Reign, Annoque Domini, 1793

THE CONDITION of this Obligation is such, That if the Above-bounden Joseph Townsend his Heirs, Executors and Administrators, respectively, do and shall for his and their Parts and Behalf, in and by all Things well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Arbitrement, Order, Judgment, final End and Determination of John Warder Joseph Gilpen Francis Yarnall & Isaac Davis or any three of them Arbitrators indifferently named, elected and chosen, as well on the Part and Behalf of the above-bounden Joseph Townsend as on the Part and behalf of the above-named Isaac Cook & Hannah his Wife To award, arbitrate, order, judge and determine of, for, upon and concerning certain Differences relating to ye Estate late of Richard Townsend decd

And of [illegible], upon and concerning all and all Manner of Action and Actions, Cause and Causes of Action and Actions, Suits in Law or Equity, Bills, Bonds, Specialties, Sum and Sums of Money, Quarrels, Contentions, Debts, Differences, Dues and Demands whatsoever, now had, made, moving, depending arising, accruing, growing or being between the said Parties, For or by Reason of any other Matter, Cause or Thing whatsoever, from the Beginning of the World until the Day of the Date above-written, So as the Award, Arbitrement, Order, Judgment, final End and Determination of the said Arbitrators, or any three of them, of and upon the Premisses, or any Part thereof, be made and given up in Writing under their Hands and Seals, ready to be delivered to the said Parties, on or before the First Day of October next ensuing the Date of the above Obligation. Then this present Obligation to be void and of none Effect, or else to be and remain in full Force and Virtue.

Sealed and delivered in the Presence of us

Jno Nicholas

John Roberts

Joseph Townsend

Photocopy made before removal of mending tape and before repairs

Know all men by these Presents That We the Subscribers Arbitrators within Named having Maturely Considered the Proofs and allegations of the within named Joseph Townsend and Isaac Cook & his wife Hannah have and by these Presents do by Virtue of the Power and Trust in us Reposed Award and Judge that the said Joseph Townsend his Heirs Exec.r or Admr shall pay or Cause to be paid unto the within named Isaac Cook & Hannah his Wife their Execut.r Admr. or Assigns the sum of Seventeen Pounds Lawfull money of Pensilv.a on or before the Nineteenth day of September w.ch will be in Year of our Lord One thousand seven Hundred and thirty four and the said Parties upon payment of the sum afo. shall give unto each other Sufficient Discharges In Witness whereof we have hereunto Set our hands and Seals this Nineteenth day of September One Thousand Seven hundred & Thirty three 1733

John Woods

Joseph Gilpin

Francis Rawles

Isaac Dean

Bond of Arbitration 1733

Photocopy made before removal of mending tape and before repairs.

KNOW all Men by these Presents, That I John Stanland of the City of Philada Stone Cutter am

Held and firmly bound unto Anthony Newhouse and Deliverance Savage [illegible] in the full and just Sum of Fifty Pounds lawful Money — To be paid to the said Anthony Newhouse & Deliverance Savage or to their certain Attorney, Executors, Administrators, or Assigns. For which Payment well and truly to be made and done I do bind my self and my — Heirs, Executors, Administrators, & each & every of them firmly by these Presents. Sealed with my Seal. Dated this Seventeenth Day of November in the 26th Year of His Majesty's Reign, Annoque Domini, 1752.

THE CONDITION of this Obligation is such, that if the Above-bounden John Stanland or his

Heirs, Executors and Administrators, respectively do and shall for his and their Parts and Behalf, in and by all Things well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Arbitrement, Order, Judgment, final End and Determination of John Johnson & Christian Lehman [illegible] Yeomen ~~[illegible]~~ Arbitrators indifferently named, elected and chosen, as well on the Part and Behalf, of the above-bounden John Stanland — as on the Part and Behalf of the above-named Anthony Newhouse & Deliverance Savage — To award, arbitrate, order, judge and determine of, for, upon and concerning a Parcel of Stones [illegible] by the [illegible] Savage in his Life time in the [illegible] John Stanland Quarry in [illegible] which stones [illegible] the said Savage Decease [illegible] now in Dispute between the s^d parties.

And of, for, upon and concerning all and all Manner of Action and Actions, Cause and Causes of Action and Actions, Suits in Law or Equity, Bills, Bonds, Specialties, Sum and Sums of Money, Quarrels, Contentions, Debts, Differences, Dues and Demands whatsoever, now had, made, moving, depending, arising, accruing, growing or being between the said Parties, for or by Reason of any other Matter, Cause or Thing whatsoever, from the Beginning of the World until the Day of the Date above-written. So as the Awards Arbitrement, Order, Judgment, final End and Determination of the said Arbitrators, ~~or any~~ of them, of and upon the Premises, or any Part thereof, be made and given up in Writing under their Hands and Seals, ready to be delivered to the said Parties, on or before the 27th — Day of this Inst. next ensuing the Date of the above Obligation, Then this Obligation to be void, otherwise to remain and be in full Force and Virtue.

Sealed and Delivered in the Presence of us

John Stanland [illegible]

George his X mark Edgington

Thomas [illegible]

PHILADELPHIA: Printed by B. Franklin, and D. Hall, at the New Printing Office, near the Market.

Miller – Item 496 page 257

Variations between text of newly discovered (1988) form of 1733 ~~form~~ and 1752 form illustrated in Miller.

the type is different on the 1752 item. It is Caslon. The 1733 is "long primer" from James Foundry

KNOW all Men by these Presents, That I John Stanland of the City of Philada Stone Cutter am Held and firmly bound unto Anthony Newhouse and Deliverance Savage Admrs of James Savage deceased in the full and just Sum of Fifty Pounds Lawfull Money. To be paid to the said Anthony Newhouse & Deliverance Savage or to their certain Attorney, Executors, Administrators, or Assigns. For which Payment well and truly to be made and done I do bind my self and my Heirs, Executors, Administrators, & Each & every of them firmly by these Presents. Sealed with my Seal. Dated this Seventeenth Day of November in the 26th Year of His Majesty's Reign, Annoque Domini, 1752.

THE CONDITION of this Obligation is such, that if the Above-bounden John Stanland or his Heirs, Executors and Administrators, respectively do and shall for his and their Parts and Behalf, in and by all Things well and truly stand to, obey, abide, observe, perform, fulfil and keep the Award, Arbitrement, Order, Judgment, final End and Determination of John Johnson & Christian Lehman of Germantown Yeomen ~~or any of them~~ Arbitrators indifferently named, elected and chosen, as well on the Part and Behalf, of the above-bounden John Stanland as on the Part and Behalf of the above-named Anthony Newhouse & Deliverance Savage To award, arbitrate, order, judge and determine of, for, upon and concerning a Parcell of Stone work got out by the said James Savage in his Life time in the sd John Stanland's Quarry in Roxborough which stone was upon the said Savage's Decease appraised as part of the sd Savage Estate and now in Dispute between the sd Parties. And of, for, upon and concerning all and all Manner of Action and Actions, Cause and Causes of Action and Actions, Suits in Law or Equity, Bills, Bonds, Specialties, Sum and Sums of Money, Quarrels, Contentions, Debts, Differences, Dues and Demands whatsoever, now had, made, moving, depending, arising, accruing, growing or being between the said Parties, for or by Reason of any other Matter, Cause or Thing whatsoever, from the Beginning of the World until the Day of the Date above-written. So as the Award, Arbitrement, Order, Judgment, final End and Determination of the said Arbitrators, ~~or any~~ of them, of and upon the Premises, or any Part thereof, be made and given up in Writing under their Hands and Seals, ready to be delivered to the said Parties, on or before the 27th Day of this Instant next ensuing the Date of the above Obligation, Then this Obligation to be void otherwise to remain and be in full Force and Virtue.

Sealed and Delivered in the Presence of us

John Stanland

George his X mark Edgington

Thomas [illegible]

PHILADELPHIA: Printed by B. Franklin, and D. Hall, at the New Printing Office, near the Market.

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[redacted]